

was titled "Assessment for the Universal Service Fund" and directed the companies to provide information as to revenues for services provided to Kansas customers. (Lammers, Tr. 2981-2982)

41. The Commission found at the hearing that notice was proper and affirmed the bench ruling in the Order. (Order ¶ 102) The Commission finds that notice is proper and affirms the Order.

42. Federal Preemption: CMT, Sprint Spectrum and Mountain Solutions argue that the State is preempted by Federal Law from requiring wireless providers to contribute to Universal Service. K.S.A. 66-104a(c) exempts wireless providers from jurisdiction, regulation, supervision and control of the Commission. However, K.S.A. 1996 Supp. 66-2008(b) requires every telecommunications carrier, telecommunications public utility and wireless telecommunications service provider that provides intrastate telecommunications services to contribute to the KUSF on an equitable and nondiscriminatory basis.

43. Section 152(b) of the Federal Act states that except for section 332 (inter alia) nothing in the Federal act gives the FCC jurisdiction over charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate service of wireless carriers.

44. Section 254(f) permits states to establish universal service regulations and requires that all telecommunications carriers contribute to the universal service fund, in an equitable and nondiscriminatory manner. Telecommunications carrier

is a defined term (Section 3(44)) and includes any provider of telecommunications services except aggregators.

45. Section 332(c)(3)(A) provides that, notwithstanding section 152(b), states cannot regulate rates charged by wireless carriers. However, that section does not prohibit states from regulating other terms or conditions of mobile service.

46. The Joint Board stated in its universal service recommendation to the FCC that several CMRS commenters argued that CMRS providers should be exempt from state universal service funds, pursuant to Section 332(c)(3). The Joint Board found that section 332(c)(3) does not preclude states from requiring CMRS providers to contribute to state support mechanisms. The Joint Board noted that 254(f) requires all contributions be equitable and nondiscriminatory.

47. CMT, Sprint Spectrum, and Mountain Solutions, Inc. cited Metro Mobile CTS of Fairfield County, Inc., et. al. v. Conn. Dept. of Public Utility Control, Case No. CV-95-0051275S (December 9, 1996) to support the argument that states are preempted from assessing wireless providers for universal service. The Connecticut Department of Public Utility Control (DPUC) argued that assessments for universal service are allowed by the language "other terms and conditions of mobile service" which the states may regulate, and are not requirements imposed to ensure universal service. The Connecticut Court found that states were preempted from assessing wireless providers for universal service. The Court interpreted section 332(c)(3)(A) as permitting states to assess wireless providers only when there is a finding that wireless services are a substitute for landline service. The Court also

voided the assessment on the grounds that the statute delegating authority to the DPUC violated the separation of powers and due process clauses of the Connecticut Constitution.

48. The Kansas Constitution differs from the Connecticut Constitutional provisions. Further, the Kansas statute differs from the Connecticut statute regarding contributions to the state universal service fund.

49. Section 254(f) specifically provides that states may require all telecommunications carriers (definition appears to include wireless providers) to contribute to state universal service funds. Section 254(f) further provides that states may establish additional definitions and standards as long as they do not rely on or burden Federal universal support mechanisms.

50. Whenever possible, statutes should be interpreted so as to be consistent. Staff believes that in order to read Sections 254(f) and 332(c)(3) as consistent, "requirements . . . necessary to ensure universal . . . service" in Section 332(c)(3) must mean something other than the contribution to preserve and advance universal service as set out in Section 254(f). The State Act imposes numerous other requirements necessary to ensure universal service on LECs. It does not impose those requirements on wireless companies.

51. The Connecticut state court ruling is not controlling as to decisions of this Commission. The Commission finds that the State Act requires that every telecommunications carrier, telecommunications public utility and wireless telecommunications service provider that provides intrastate telecommunications

services contribute to the KUSF. K.S.A. 1996 Supp. 66-2008(b) Further, the Commission finds that K.S.A. 1996 Supp. 66-2001 et. seq. is not preempted by Federal law. Therefore, the Commission denies reconsideration of this issue.

F. CURB SUPPLEMENTAL ISSUES

52. CURB requested reconsideration of sixteen additional issues but provided no support nor citation to the record in its request. K.S.A. 77-529 states "Any party . . . may file a petition for reconsideration with the agency head, stating the specific grounds upon which relief is requested." CURB's request for reconsideration did not state with sufficient specificity the grounds upon which it requests reconsideration. Therefore, the Commission denies reconsideration of these issues.

F. CLARIFICATION ISSUES

53. Sprint requested clarification of the subsidy amount - whether the \$36.88 amount is a monthly or yearly figure. The \$36.88 amount is a yearly figure, per residential loop and single line business line.

54. Sprint and Columbus requested clarification of the statement "up to" \$36.88 at ¶ 124 of the Order. If a LEC's access charge reduction amounts to less than \$36.88 per line, the LEC will only receive the amount necessary to remain revenue neutral. No LEC will receive more than \$36.88.

55. Columbus requested clarification of how rural companies will recover contributions to the KUSF referring to a possible "phasing in" of recovery of

replacement revenue from rural customers. Recovery from customers will be determined by each company. Staff is available for consultation.

56. Columbus requested clarification of which revenues will be subject to the 14.1% assessment for LECs. Net intrastate retail revenues from regulated services are subject to the assessment. Attachment A to this Order provides further definition of revenues subject to assessment.

57. Columbus asked whether customers' payments for recovery of the KUSF contributions are subject to the 14.1% KUSF assessment. Yes, KUSF flow-through amounts are considered retail revenue and are included in the base amount for determination of the amount payable to the KUSF.

58. Columbus requested clarification on coin telephone and other miscellaneous charges. These charges only apply to SWBT and United and will have no impact on what independent LECs receive from the fund. The coin telephone and miscellaneous charges affect the manner in which the KUSF assessment is flowed through to customers by SWBT and United but have no impact on the amount the independent LECs will receive from the fund.

59. Columbus asked for clarification of the statement "must offer to provide service to all customers in the rural telephone company study area as defined by the FCC." Section 214(e)(1)(A) & (B) of the Telecommunications Act of 1996 states: "A common carrier designated as an eligible telecommunications carrier . . . shall be eligible to receive universal service support in accordance with section 254 and shall . . . (A) offer the services that are supported by Federal universal

service support mechanisms under section 254(c), . . . and (B) advertise the availability of such services and the charges therefor using media of general distribution." What constitutes "offer" may become an issue in rural entry proceedings.

60. Columbus stated imposition of new charges on rural telecommunications customers is inequitable. Only customers placing the highest number of calls will benefit by access rate reductions. Only those who obtain benefits should bear the cost. K.S.A. 1996 Supp. 66-2008(b) states: "[t]he commission shall require every telecommunications carrier, telecommunications public utility and wireless telecommunications service provider that provides intrastate telecommunications services to contribute to the KUSF on an equitable and nondiscriminatory basis. Any telecommunications carrier, telecommunications public utility or wireless telecommunications service provider which contributes to the KUSF may collect from customers an amount equal to such carrier's, utility's or provider's contribution." The Commission notes that customers may benefit from access to long distance service even if they do not place many long distance calls.

61. Columbus requested clarification of the differences between a "rural telephone company serving area" and a "rural area." The Commission defines rural telephone company serving area and area qualifying for universal support similarly. Rural telephone serving area is defined in K.S.A. 1996 Supp. 66-1,189(k) as "(1) In the case of a rural telephone company, operating area or service area means such company's study area or areas as approved by the federal

communications commission; (2) in the case of a local exchange carrier, other than a rural telephone company, operating area or service area means such carrier's local exchange service area or areas as approved by the commission."

62. Columbus asked for clarification on which issues of the April 4, 1996 order stand as originally ordered. Section II (A) (9 & 10) Kansas Universal Service Fund; (C) (19, 20, 21) Items to be Supported; (E) (26) Promotion of Universal Service and Telephone Subscribership and (E) (27) Statewide Average Toll Rates; (F) (28) Definition of Basic Service.

63. Columbus requested the Commission define the term ALEC, explain under which regulatory regime ALECs will provide service, and whether KUSF support would be available for facilities-based ALECs only. An ALEC is a telecommunications carrier certified to provide local service after January 1, 1996. According to K.S.A. 1996 Supp. 66-2005(v), telecommunications carriers are exempt from price regulation. They will be subject to quality of service requirements. KUSF support will be available for facilities-based ALECs. KUSF support for ALECs providing service through unbundled elements (UNES) will be determined based on the method for pricing UNES. If the price is cost based, the LEC has fully recovered its cost and support should go to the ALEC. Final determination of these issues is best left until the FCC issues its universal service order.

64. Columbus requested clarification on supplemental funding. Any company may request supplemental funding for additional lines. Supplemental

funding through an expedited rate proceeding or a general rate case is reserved for rate of return regulated companies. K.S.A. 1996 Supp. 66-2008(e) and (f).

65. Columbus and AT&T requested clarification of the Stipulation. The stipulation is approved. The KUSF assessment for LECs will be made on net intrastate retail revenues for regulated services. KUSF assessment will be determined on an annual basis. As independent LECs raise their rates to the statewide average, their revenue reports will incorporate those increases. Incumbent LECs are subject to the same assessment percentage as all other carriers. The Commission's modification of the Stipulation to "not reduce the amount of funding for the KUSF" refers to paragraph 4 of the Stipulation. Paragraph 4 indicates that a movement to statewide average local rates is credited toward a LEC's assessment amount. When this credit occurs, the overall KUSF assessment amount is reduced. The provisions of the Stipulation can still be carried out and rate shock avoided by determining the full amount due the KUSF and collecting it from all the parties to the Stipulation.

66. AT&T asked for clarification on portability of the subsidy amount. The KUSF amount is paid on a per line basis. As a carrier reports additional lines to the KUSF administrator for supplemental funding, the line count will by necessity net gains and losses in lines. If a carrier experiences a declining line count there is no requirement to report. A requirement to report a declining line count may raise the stranded investment issue and whether or not it should be compensated. The subsidy amount cannot be said to "follow" either the customer or the carrier but is

determined on the basis of number of lines. At least initially the Act requires revenue neutrality. K.S.A. 1996 Supp. 66-2008(a). On a going forward basis, K.S.A. 1996 Supp. 66-2008(d) requires the Commission to "review the KUSF to determine if the costs . . . to provide local service justify modification of the KUSF."

67. AT&T requested that the Commission define the term "exchange." Exchange is generally defined as the incumbent local exchange company's local calling area (excluding EAS) as defined by the territory legal descriptions approved by the Commission. In the context of paragraphs 140-149 of the December 27, 1996 Order the following definition applies: a small geographic area such as a wire center or zone within a metropolitan exchange. It does not include all the wire centers or zones within a metropolitan exchange. This limitation is designed to allow the price cap regulated LEC pricing flexibility within a competitive wire center of a metropolitan exchange without allowing it the ability to inappropriately recover potential competitive losses through increased rates in those other wire centers in the metropolitan exchange where customers do not yet have access to the competitive services available from alternative providers. When an entire exchange (as per the general definition) is declared competitive, all the wire centers and zones within the exchange boundaries will be included.

68. SWBT requested the Commission clarify that the sentence in paragraph 151 regarding price cap index calculation was not intended to alter the statutory scheme regarding price cap plans. Paragraph 151 regarding price cap index calculation was not intended to alter the statutory scheme regarding price cap plans.

69. Any issue not addressed specifically in this ordered is affirmed.

IT IS, THEREFORE, BY ~~THE~~ COMMISSION ORDERED THAT:

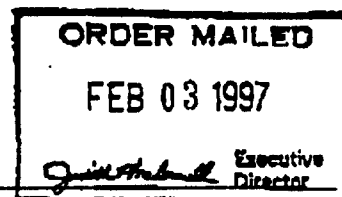
The Petitions for Reconsideration of the Commission's December 27, 1996 Order are hereby granted in part and denied in part and the Order is clarified as set forth above.

The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

McKee, Chr.; Seltsam, Com.; Wine, Com.

Dated: FEB 03 1997



Judith McConnell
Executive Director

EP/JC/MD

Docket No. 190,490-U Order dated 2/3 1996.

ATTACHMENT 1

REVENUES SUBJECT TO KUSF ASSESSMENT

Retail revenues are derived from service to an end user, not to a reseller, or ALEC. Retail revenues exclude revenues from resold services, unbundled local access services, and access for providing long distance service.

A company purchasing a service for resale to an end user will assess the KUSF assessment on revenues collected from its end users. The wholesale company will not include services which it sells to resellers in its retail revenues. Services purchased for internal use and not resold to end users will be considered retail revenues to the wholesale company, which should assess any KUSF assessment on such revenues. They will not be included in the reseller's retail revenues. Revenues from services sold to STS providers are retail revenues and will be reported by the LEC. The STS provider will not report its retail revenue to the KUSF.

Retail revenues include, but are not limited to revenues from the following types of services and charges:

- intrastate local service, intrastate vertical services, intrastate private line service, coin service, directory assistance, directory listings, mobile service billed to end users, special access service billed to end users.
- Long distance service, intercity special access billed to end users.
- Revenues from comparable services billed by wireless providers to Kansas customers, including monthly charges, usage, roaming usage when the tower used is in Kansas, and intrastate long distance charges.
- Miscellaneous charges including: late payment charges, customer fees, nonrecurring and installation.
- KUSF assessments that are flowed through as charges to the customer.

Retail revenues do not include revenues derived from the following types of services and charges:

- Franchise tax pass-on charges.
- Local, state, and federal taxes.
- Interstate long distance, and special access services.
- Federal USF payments.

Additional definitions to determine reportable revenues.

- The local calling area takes precedence over the state and interstate jurisdictions. For LECs revenues derived from calls from Kansas City, KS to Kansas City, MO within the LEC's local calling area are considered local and should be included. For Cellular companies revenues derived from a retail sale involving the use of furnishing of a mobile phone, cellular phone, beeper or other similar service shall be considered to have been consummated at the billing address of the subscriber as it appears in the retailer's records.
- Revenues from long distance and special access services are considered to be intrastate revenues when both parties to the call are within the same state, regardless of the routing or servicing of the call. Thus a Wichita to Topeka call routed through Chicago is an intrastate call.

UNITED STATES CODE ANNOTATED
TITLE 47. TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS
CHAPTER 5--WIRE OR RADIO COMMUNICATION
SUBCHAPTER II--COMMON CARRIERS
PART II--DEVELOPMENT OF COMPETITIVE MARKETS

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Current through P.L. 104-333, approved 11-12-96

§ 254. Universal service

(a) Procedures to review universal service requirements

(1) Federal-State Joint Board on universal service

Within one month after February 8, 1996, the Commission shall institute and refer to a Federal-State Joint Board under section 410(c) of this title a proceeding to recommend changes to any of its regulations in order to implement sections 214(e) of this title and this section, including the definition of the services that are supported by Federal universal service support mechanisms and a specific timetable for completion of such recommendations. In addition to the members of the Joint Board required under section 410(c) of this title, one member of such Joint Board shall be a State-appointed utility consumer advocate nominated by a national organization of State utility consumer advocates. The Joint Board shall, after notice and opportunity for public comment, make its recommendations to the Commission 9 months after February 8, 1996.

(2) Commission action

The Commission shall initiate a single proceeding to implement the recommendations from the Joint Board required by paragraph (1) and shall complete such proceeding within 15 months after February 8, 1996. The rules established by such proceeding shall include a definition of the services that are supported by Federal universal service support mechanisms and a specific timetable for implementation. Thereafter, the Commission shall complete any proceeding to implement subsequent recommendations from any Joint Board on universal service within one year after receiving such recommendations.

(b) Universal service principles

The Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles:

(1) Quality and rates

Quality services should be available at just, reasonable, and affordable rates.

(2) Access to advanced services

Access to advanced telecommunications and information services should be provided in all regions of the Nation.

(3) Access in rural and high cost areas

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Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

(4) Equitable and nondiscriminatory contributions

All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.

(5) Specific and predictable support mechanisms

There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.

(6) Access to advanced telecommunications services for schools, health care, and libraries

Elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services as described in subsection (h) of this section.

(7) Additional principles

Such other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this chapter.

(c) Definition

(1) In general

Universal service is an evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services. The Joint Board in recommending, and the Commission in establishing, the definition of the services that are supported by Federal universal service support mechanisms shall consider the extent to which such telecommunications services--

(A) are essential to education, public health, or public safety;

(B) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;

(C) are being deployed in public telecommunications networks by telecommunications carriers; and

(D) are consistent with the public interest, convenience, and necessity.

(2) Alterations and modifications

The Joint Board may, from time to time, recommend to the Commission modifications in the definition of the services that are supported by Federal universal service support mechanisms.

(3) Special services

In addition to the services included in the definition of universal service under paragraph (1), the Commission may designate additional services for such support mechanisms for schools, libraries, and health care providers for the purposes of subsection (h) of this section.

(d) Telecommunications carrier contribution

Every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service. The Commission may exempt a carrier or class of carriers from this requirement if the carrier's telecommunications activities are limited to such an extent that the level of such carrier's contribution to the preservation and advancement of universal service would be de minimis. Any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires.

(e) Universal service support

After the date on which Commission regulations implementing this section take effect, only an eligible telecommunications carrier designated under section 214(e) of this title shall be eligible to receive specific Federal universal service support. A carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Any such support should be explicit and sufficient to achieve the purposes of this section.

(f) State authority

A State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service. Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State. A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.

(g) Interexchange and interstate services

Within 6 months after February 8, 1996, the Commission shall adopt rules to require that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas. Such rules shall also require that a provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State.

(h) Telecommunications services for certain providers

(1) In general

(A) Health care providers for rural areas

A telecommunications carrier shall, upon receiving a bona fide request, provide telecommunications services which are necessary for the provision of health care services in a State, including instruction relating to such services, to any public or nonprofit health care

provider that serves persons who reside in rural areas in that State at rates that are reasonably comparable to rates charged for similar services in urban areas in that State. A telecommunications carrier providing service under this paragraph shall be entitled to have an amount equal to the difference, if any, between the rates for services provided to health care providers for rural areas in a State and the rates for similar services provided to other customers in comparable rural areas in that State treated as a service obligation as a part of its obligation to participate in the mechanisms to preserve and advance universal service.

(B) Educational providers and libraries

All telecommunications carriers serving a geographic area shall, upon a bona fide request for any of its services that are within the definition of universal service under subsection (c)(3) of this section, provide such services to elementary schools, secondary schools, and libraries for educational purposes at rates less than the amounts charged for similar services to other parties. The discount shall be an amount that the Commission, with respect to interstate services, and the States, with respect to intrastate services, determine is appropriate and necessary to ensure affordable access to and use of such services by such entities. A telecommunications carrier providing service under this paragraph shall--

(i) have an amount equal to the amount of the discount treated as an offset to its obligation to contribute to the mechanisms to preserve and advance universal service, or

(ii) notwithstanding the provisions of subsection (e) of this section, receive reimbursement utilizing the support mechanisms to preserve and advance universal service.

(2) Advanced services

The Commission shall establish competitively neutral rules--

(A) to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms, health care providers, and libraries; and

(B) to define the circumstances under which a telecommunications carrier may be required to connect its network to such public institutional telecommunications users.

(3) Terms and conditions

Telecommunications services and network capacity provided to a public institutional telecommunications user under this subsection may not be sold, resold, or otherwise transferred by such user in consideration for money or any other thing of value.

(4) Eligibility of users

No entity listed in this subsection shall be entitled to preferential rates or treatment as required by this subsection, if such entity operates as a for-profit business, is a school described in paragraph (5)(A) with an endowment of more than \$50,000,000, or is a library or library consortium not eligible for assistance from a State library administrative agency under the Library Services and Technology Act [20 U.S.C.A. § 9121 et seq.].

(5) Definitions

For purposes of this subsection:

(A) Elementary and secondary schools

The term "elementary and secondary schools" means elementary schools and secondary schools, as defined in paragraphs (14) and (25), respectively, of section 9801 of Title 20.

(B) Health care provider

The term "health care provider" means--

- (i) post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools;
- (ii) community health centers or health centers providing health care to migrants;
- (iii) local health departments or agencies;
- (iv) community mental health centers;
- (v) not-for-profit hospitals;
- (vi) rural health clinics; and
- (vii) consortia of health care providers consisting of one or more entities described in clauses (i) through (vi).

(C) Public institutional telecommunications user

The term "public institutional telecommunications user" means an elementary or secondary school, a library, or a health care provider as those terms are defined in this paragraph.

(i) Consumer protection

The Commission and the States should ensure that universal service is available at rates that are just, reasonable, and affordable.

(j) Lifeline Assistance

Nothing in this section shall affect the collection, distribution, or administration of the Lifeline Assistance Program provided for by the Commission under regulations set forth in section 69.117 of title 47, Code of Federal Regulations, and other related sections of such title.

(k) Subsidy of competitive services prohibited

A telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition. The Commission, with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.

CREDIT(S)

1997 Electronic Pocket Part Update

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(Pub.L. 104-104, Title I, § 101(a), Feb. 8, 1996, 110 Stat. 71; Pub.L. 104-208, Div. A, Title I, § 101(e) [Title VII, § 709(a)(8)], Sept. 30, 1996, 110 Stat. 3009-___)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1996 Acts. House Report No. 104-304 and House Conference Report No. 104-458, see 1996 U.S. Code Cong. and Adm. News, p. 10.

References in Text

This chapter, referred to in subsec. (b)(7), was in the original "this Act", meaning Act June 19, 1934, c. 652, 48 Stat. 1064, as amended, known as the Communications Act of 1934, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 609 of this title and Tables.

The Library Services and Technology Act, referred to in subsec. (h)(4), is subtitle B of Pub.L. 94-462, Title II, as added by Pub.L. 104-208, Div. A, Title I, § 101(e) [Title VII, § 702], Sept. 30, 1996, 110 Stat. 3009-___, which is classified generally to subchapter II (section 9121 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 9101 of Title 20 and Tables.

47 U.S.C.A. § 254

47 USCA § 254

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shall provide assistance to the task force as may be requested by the task force.

(e) Task force members enumerated in subparts (1), (2), (6), (7), (10) and (11) of subsection (a) shall receive amounts provided by subsection (e) of K.S.A. 75-3223 and amendments thereto for each day of actual attendance at any meeting of the task force or any subcommittee meeting approved by the task force. Such amounts paid to members shall be paid from appropriations to the legislative coordinating council pursuant to vouchers prepared by the director of legislative administrative services and approved by the chairperson or vice-chairperson of the legislative coordinating council.

(f) The task force shall study issues related to competition in the furnishing of retail electric service in this state, including but not limited to:

(1) Actions of the federal energy regulatory commission;

(2) the obligation of electric utilities to serve customers;

(3) the economic impact on each class of electric utility customer;

(4) the social impact on Kansas citizens;

(5) the impact on state general fund revenues and local franchise and tax revenues;

(6) the status of electrical generating facilities in a competitive environment;

(7) savings that may be achieved by electric utility mergers and down-sizing;

(8) recovery of stranded costs;

(9) unbundling of generation, transmission and distribution services;

(10) leveling the financing of capital investment;

(11) retail wheeling, including loop losses;

(12) brokerage;

(13) incentives for renewable energy investment;

(14) the feasibility of establishment of retail customer service areas, consisting of all classes of customers, for which retail suppliers would compete to serve;

(15) stranded benefits such as the cold weather rule and charitable contributions by retail suppliers;

(16) nonprice issues such as customer service, storm damage repair, energy conservation and billing;

(17) the impact on municipal electric utilities and rural electric cooperatives; and

(18) the impact on existing statutes.

(g) The task force shall submit a preliminary report to the house and senate committees on energy and natural resources on or before January 15, 1997, and a final report of its findings and recommendations to the house and senate committees on energy and natural resources on or before January 11, 1998.

History: L. 1996, ch. 150, § 1; Apr. 18.

66-1902. Corporation commission authority. Before July 1, 1999, the state corporation commission shall continue to regulate retail electric suppliers in accordance with the provisions of K.S.A. 66-1,170 through 66-1,176, and amendments thereto, and shall not authorize competition in the furnishing of retail electric service in this state. The commission may open one or more generic dockets to study the issue of competition in the furnishing of retail electric service.

History: L. 1996, ch. 150, § 2; Apr. 18.

66-1903. Expiration of act. The provisions of K.S.A. 1996 Supp. 66-1901 and 66-1902 shall expire on July 1, 1999.

History: L. 1996, ch. 150, § 3; Apr. 18.

Article 20.—TELECOMMUNICATIONS

66-2001. Telecommunications; declaration of public policy. It is hereby declared to be the public policy of the state to:

(a) Ensure that every Kansan will have access to a first class telecommunications infrastructure that provides excellent services at an affordable price;

(b) ensure that consumers throughout the state realize the benefits of competition through increased services and improved telecommunications facilities and infrastructure at reduced rates;

(c) promote consumer access to a full range of telecommunications services, including advanced telecommunications services that are comparable in urban and rural areas throughout the state;

(d) advance the development of a statewide telecommunications infrastructure that is capable of supporting applications, such as public safety, telemedicine, services for persons with special needs, distance learning, public library services, access to internet providers and others; and

(e) protect consumers of telecommunications services from fraudulent business practices and

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History: L. 1996, ch. 268, § 1; July 1.

Cross References to Related Sections:

Applicable definitions, see 66-1,187.

**66-2002. Duties of the corporation
commission.** The commission shall:

(a) Adopt a definition of "universal service"
and "enhanced universal service," pursuant to
subsections (p) and (q) of K.S.A. 1996 Supp. 66-
1,187;

(b) authorize any requesting telecommunica-
tions carrier to provide local exchange or exchange
access service pursuant to subsection (a) of K.S.A.
1996 Supp. 66-2003;

(c) on or before July 1, 1996, the commission
shall initiate a proceeding to adopt guidelines to
ensure that all telecommunications carriers and
local exchange carriers preserve and enhance uni-
versal service, protect the public safety and wel-
fare, ensure the continued quality of telecom-
munications services and safeguard the rights of
consumers;

(d) review, approve and ensure compliance
with network infrastructure plans submitted by lo-
cal exchange carriers pursuant to K.S.A. 1996
Supp. 66-2005;

(e) review, approve and ensure compliance
with regulatory plans submitted by local exchange
carriers pursuant to K.S.A. 1996 Supp. 66-2005;

(f) on or before January 1, 1997, establish,
pursuant to K.S.A. 1996 Supp. 66-2006, the Kan-
sas lifeline service program, hereinafter referred
to as the KLSP;

(g) initiate and complete a proceeding by Jan-
uary 1, 1997, to establish a competitively neutral
mechanism or mechanisms to fund: dual party re-
lay services for Kansans who are speech or hearing
impaired; telecommunications equipment for
persons with visual impediments; and telecom-
munications equipment for persons with other
special needs. This funding mechanism or mech-
anisms shall be implemented by March 1, 1997;

(h) on or before January 1, 1997, establish the
Kansas universal service fund pursuant to K.S.A.
1996 Supp. 66-2008, hereinafter referred to as the
KUSF, and make various determinations relating
to the implementation of such fund;

(i) authorize all local exchange carriers to pro-
vide internet access as outlined in K.S.A. 1996
Supp. 66-2011 and report on the status of the im-

plementation provisions to specified legislative
committees;

(j) review the federal act and adopt additional
standards and guidelines as necessary for enforc-
ing slamming restrictions;

(k) commencing on June 1, 1997 and peri-
odically thereafter, review and, to the extent nec-
essary, modify the definition of universal service
and enhanced universal service, and KUSF, taking
into account advances in telecommunications and
information technology and services;

(l) on or before January 1, 1997, initiate and
complete a proceeding to establish minimum
quality of service standards which will be equally
applicable to all local exchange carriers and tele-
communications carriers in the state; any local
exchange carrier or telecommunications carrier
violating such standards, for each occurrence,
shall forfeit and pay a penalty of not less than
\$100, nor more than \$5,000; violations of such
standards shall be enforced in accordance with
provisions of K.S.A. 66-138 and 66-177, and
amendments thereto; and

(m) on January 1, 2000, prepare and submit a
report to the legislature. The report shall include
an analysis of the manner in which the regulatory
framework has served to: Protect consumers; safe-
guard universal service; ensure that consumers
have reaped the benefits of competition; maxi-
mize the use of market forces; and promote de-
velopment of the telecommunications infrastruc-
ture throughout the state. The commission also
shall recommend if and how the KUSF should be
modified.

History: L. 1996, ch. 268, § 3; July 1.

**66-2003. Local exchange carriers; re-
sale; terms and conditions.** (a) On or before
September 1, 1996, the commission shall begin to
authorize applications for certificates of public
convenience and necessity to provide local
exchange or exchange access service.

(b) A local exchange carrier shall be required
to offer to allow reasonable resale of its retail tel-
ecommunications services and to sell unbundled
local loop, switch and trunk facilities to telecom-
munications carriers, as required by the federal
act and pursuant to negotiated agreements or a
statement of terms and conditions generally avail-
able to telecommunications carriers.

(c) To encourage telecommunications carri-
ers to build or install telecommunications facili-
ties, including, but not limited to, local loop and

switching facilities in the state, and except as otherwise negotiated by a local exchange carrier and a telecommunications carrier, the prices for such unbundled facilities shall be determined by the commission, on a nondiscriminatory basis, to permit the recovery of costs and a reasonable profit. The commission shall determine wholesale rates on the basis of retail rates charged subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection and other costs, that will be avoided by the local exchange carrier. The commission shall approve resale restrictions proposed by any local exchange carrier which prohibit resellers from purchasing retail telecommunications services offered by that local exchange carrier to one category of customers and reselling those retail services to a different category of customers. Upon a finding that such practice would be anticompetitive, anticonsumer or detrimental to the quality of the network infrastructure, the commission may prohibit the resale of retail services at a rate lower than the wholesale rate. The commission shall approve any other reasonable limitation on resale to the extent permitted by the federal act.

(d) As provided in the federal act, in order for telecommunications carriers to provide local exchange service and exchange access service, local exchange carriers shall provide the means to interconnect their respective customers, including, but not limited to, toll access, access to operator services, access to directory listings and assistance, and access to E911 service.

(e) Customers shall be accorded number portability and local dialing parity in conformance with national standards to the extent economically and technically feasible. Terms and prices for interconnection, unbundled facilities and resale of existing retail telecommunications services shall be negotiated in good faith between the parties. During the period from the 135th through the 160th day after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition the commission to arbitrate any open issues. Arbitration shall occur in conformance with the provisions of section 252 of the federal act.

(f) The commission shall require, consistent with the terms of the federal act, that 1+ intraLATA dialing parity be provided by all local exchange carriers and telecommunications carriers

coincidentally with the provision of in-region interLATA toll services in the state by local exchange carriers with more than 150,000 access lines or their affiliates.

History: L. 1996, ch. 268, § 4, July 1.

66-2004. Rural telephone companies; competition; certification. (a) Pursuant to subsection (f)(1) of section 251 of the federal act, the obligations of an incumbent local exchange carrier, which include the duty to negotiate interconnection, unbundled access, resale, notice of changes and collocation, shall not apply to a rural telephone company unless such company has received a bona fide request for interconnection services or network elements and the commission determines that such request is not unduly economically burdensome, is technically feasible and preserves and enhances universal service.

(b) On July 1, 1996, the commission shall initiate a rulemaking procedure to adopt guidelines to ensure that all telecommunications carriers and local exchange carriers preserve and enhance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services and safeguard the rights of consumers. The preservation and advancement of universal service shall be a primary concern. The commission shall issue the guidelines no later than December 31, 1996.

(c) Pursuant to subsection (f) of section 253 of the federal act, any telecommunications carrier that seeks to provide telephone exchange service or local exchange access in a service area served by a rural telephone company shall meet the requirements of subsection (e)(1) of section 214 of the federal act for designation as an eligible telecommunications carrier for that area before being permitted by the commission to provide such service; however, the guidelines shall be consistent with the provisions of subsection (f)(1) and (2) of section 253 of the federal act.

(d) The commission may grant a certificate to provide local exchange or exchange access service in the service area of a rural telephone company if, among other issues to be considered by the commission, the application for such certificate complies with commission guidelines issued pursuant to subsection (b).

(e) Any restrictions established by the commission for rural entry of competitors or for resale and unbundling of services shall not apply to any service area of a rural telephone company if such

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Supp. 66-2003 and this section, in any area of the
state outside of its local exchange areas, as ap-
proved by the commission on or before January
1, 1996, and outside of any area in which it is the
successor to the local exchange carrier serving
such area on or before January 1, 1996.

History: L. 1996, ch. 266, § 5; July 1.

**66-2005. Telecommunications; infra-
structure development; universal service
requirements; rate rebalancing; price cap
regulation; price deregulation; individual
customer pricing; price reregulation.** (a) Each
local exchange carrier shall file a network infra-
structure plan with the commission on or after
January 1, 1997, and prior to January 1, 1998.
Each plan, as a part of universal service protec-
tion, shall include schedules, which shall be ap-
proved by the commission, for deployment of uni-
versal service capabilities by July 1, 1996, and the
deployment of enhanced universal service capa-
bilities by July 1, 2001, as defined pursuant to sub-
sections (p) and (q) of K.S.A. 1996 Supp. 66-
1167, respectively. Each plan shall demonstrate
the capability of the local exchange carrier to com-
ply on an ongoing basis with quality of service
standards to be adopted by the commission no
later than January 1, 1997.

(b) In order to protect universal service, fa-
cilitate the transition to competitive markets and
stimulate the construction of an advanced tele-
communications infrastructure, each local
exchange carrier shall file a regulatory reform plan
at the same time as it files the network infrastruc-
ture plan required in subsection (a). As part of its
regulatory reform plan, a local exchange carrier
may elect traditional rate of return regulation or
price cap regulation. Carriers that elect price cap
regulation shall be exempt from rate base, rate of
return and earnings regulation. However, the
commission may resume such regulation upon
finding, after a hearing, that a carrier that is sub-
ject to price cap regulation has violated minimum
quality of service standards pursuant to subsection
(1) of K.S.A. 1996 Supp. 66-2002; been given rea-
sonable notice and an opportunity to correct the
violation; and failed to do so. Regulatory reform
plans also shall include:

(1) A commitment to provide existing and
newly ordered point-to-point broadband services to:
Any hospital as defined in K.S.A. 65-425, and
amendments thereto; any school accredited pur-
suant to K.S.A. 72-1101 *et seq.* and amendments
thereto; any public library; or other state and local
government facilities at discounted prices close to,
but not below, long-run incremental cost, and

(2) a commitment to provide basic rate ISDN
service, or the technological equivalent, at prices
which are uniform throughout the carrier's service
area and which are designed to stimulate the de-
velopment of an extensive residential market. Lo-
cal exchange carriers shall not be required to allow
retail customers purchasing the foregoing dis-
counted services to resell those services to other
categories of customers. Telecommunications car-
riers may purchase basic rate ISDN services for
resale in accordance with K.S.A. 1996 Supp. 66-
2003. The commission may reduce prices charged
for services outlined in provisions (1) and (2), of
this subsection, if the commitments of the local
exchange carrier set forth in those provisions are
not being kept.

(c) Subject to the commission's approval, all
local exchange carriers shall reduce intrastate ac-
cess charges to interstate levels as provided
herein. Rates for intrastate switched access, and
the unputed access portion of toll, shall be re-
duced over a three-year period with the objective
of equalizing interstate and intrastate rates in a
revenue neutral, specific and predictable manner.
The commission is authorized to rebalance local
residential and business service rates to offset the
intrastate access and toll charge reductions. Any
remaining portion of the reduction in access and
toll charges not recovered through local residen-
tial and business service rates shall be paid out
from the KUSF pursuant to K.S.A. 1996 Supp. 66-
2005. Rural telephone companies shall reduce
their intrastate switched access rates to interstate
levels on March 1, 1997, and every two years
thereafter, as long as amounts equal to such re-
ductions are recovered from the KUSF.

(d) Beginning March 1, 1997, each rural tel-
ephone company shall have the authority to in-
crease annually its monthly basic local residential
and business service rates by an amount not to
exceed \$1 in each 12 month period until such
monthly rates reach an amount equal to the state-
wide rural telephone company average rates for
such services. The statewide rural telephone com-
pany average rates shall be the arithmetic mean

of the lowest flat rate as of March 1, 1996, for local residential service and for local business service offered by each rural telephone company within the state. In the case of a rural telephone company which increases its local residential service rate or its local business service rate, or both, to reach the statewide rural telephone company average rate for such services, the amount paid to the company from the KUSF shall be reduced by an amount equal to the additional revenue received by such company through such rate increase. In the case of a rural telephone company which elects to maintain a local residential service rate or a local business service rate, or both, below the statewide rural telephone company average, the amount paid to the company from the KUSF shall be reduced by an amount equal to the difference between the revenue the company could receive if it elected to increase such rate to the average rate and the revenue received by the company.

(e) For regulatory reform plans in which price cap regulation has been elected, price cap plans shall have three baskets: Residential and single-line business, including touch-tone; switched access services; and miscellaneous services. The commission shall establish price caps at the prices existing when the regulatory plan is filed subject to rate rebalancing as provided in subsection (c) for residential services, including touch-tone services, and for single-line business services, including touch-tone services, within the residential and single-line business service basket. The commission shall establish a formula for adjustments to the price caps. The commission also shall establish price caps at the prices existing when the regulatory plan is filed for the miscellaneous services basket. The commission shall approve any adjustments to the price caps for the miscellaneous service basket, as provided in subsection (f).

(f) On or before January 1, 1997, the commission shall issue a final order in a proceeding to determine the price cap adjustment formula that shall apply to the price caps for the local residential and single-line business and the miscellaneous services baskets and for sub-categories, if any, within those baskets. In determining this formula, the commission shall balance the public policy goals of encouraging efficiency and promoting investment in a quality, advanced telecommunications network in the state. The commission also shall establish any informational filing requirements necessary for the review of any price cap

tariff filings, including price increases or decreases within the caps, to verify such caps would not be exceeded by any proposed price change. The adjustment formula shall apply to the price caps for the local residential and single-line business basket after December 31, 1999, and to the miscellaneous services basket after December 31, 1997. The price cap formula, but not actual prices, shall be reviewed every five years.

(g) The price caps for the residential and single-line business service basket shall be capped at their initial level until January 1, 2000, except for any increases authorized as a part of the revenue neutral rate rebalancing under subsection (c). The price caps for this basket and for the categories in this basket, if any, shall be adjusted annually after December 31, 1999, based on the formula determined by the commission under subsection (f).

(h) The price cap for the switched access service basket shall be set based upon the local exchange carrier's intrastate access tariffs as of January 1, 1997, except for any revenue neutral rate rebalancing authorized in accordance with subsection (c). Thereafter, the cap for this basket shall not change except in connection with any subsequent revenue neutral rebalancing authorized by the commission under subsection (c).

(i) The price caps for the miscellaneous services basket shall be adjusted annually after December 31, 1997, based on the adjustment formula determined by the commission under subsection (f).

(j) A price cap is a maximum price for all services taken as a whole in a given basket. Prices for individual services may be changed within the service categories, if any, established by the commission within a basket. An entire service category, if any, within the residential and single-line business basket or miscellaneous services basket may be priced below the cap for such category. Unless otherwise approved by the commission, no service shall be priced below the price floor which will be long-run incremental cost and imputed access charges. Access charges equal to those paid by telecommunications carriers to local exchange carriers shall be imputed as part of the price floor for toll services offered by local exchange carriers on a toll service basis.

(k) A local exchange carrier may offer promotions within an exchange or group of exchanges. All promotions shall be approved by the commission and shall apply to all customers in a

nondiscriminatory manner within the exchange or group of exchanges.

(l) Unless the commission authorizes price deregulation at an earlier date, intrastate toll services within the miscellaneous services basket shall continue to be regulated until the affected local exchange carrier begins to offer 1+ intra-LATA dialing parity throughout its service territory, at which time intrastate toll will be price deregulated, except that prices cannot be set below the price floor.

(m) On or before July 1, 1997, the commission shall establish guidelines for reducing regulation prior to price deregulation of price cap regulated services in the miscellaneous services basket, the switched access services basket, and the residential and single-line business basket.

(n) Subsequent to the adoption of guidelines pursuant to subsection (m), the commission shall initiate a petitioning procedure under which the local exchange carrier may request rate range pricing. The commission shall act upon a petition within 21 days, subject to a 30 day suspension. The prices within a rate range shall be tariffed and shall apply to all customers in a nondiscriminatory manner in an exchange or group of exchanges.

(o) A local exchange carrier may petition the commission to designate an individual service or service category, if any, within the miscellaneous services basket, the switched access services basket or the residential and single-line business basket for reduced regulation. The commission shall act upon a petition for reduced regulation within 21 days, subject to a suspension period of an additional 30 days, and upon a good cause showing of the commission in the suspension order, or within such shorter time as the commission shall approve. The commission shall issue a final order within the 21 day period or within a 51 day period if a suspension has been issued. Following an order granting reduced regulation of an individual service or service category, the commission shall act on any request for price reductions within 7 days subject to a 30 day suspension. The commission shall act on other requests for price cap adjustments, adjustments within price cap plans and on new service offerings within 21 days subject to a 30 day suspension. Such a change will be presumed lawful unless it is determined the prices are below the price floor or that the price cap for a category, if any, within the entire basket has been exceeded.

(p) The commission may price deregulate within an exchange area, or at its discretion on a statewide basis, any individual service or service category upon a finding by the commission that there is a telecommunications carrier or an alternative provider providing a comparable product or service, considering both function and price, in that exchange area. The commission shall act upon a petition for price deregulation within 21 days, subject to a suspension period of an additional 30 days, and upon a good cause showing of the commission in the suspension order, or within such shorter time as the commission shall approve; provided that no such petition shall be filed prior to July 1997, unless the commission otherwise authorizes. The commission shall issue a final order within the 21 day period or within a 51 day period if a suspension has been issued.

(q) Upon complaint or request, the commission may investigate a price deregulated service. The commission shall resume price regulation of a service provided in any exchange area by placing it in the appropriate service basket, as approved by the commission, upon a determination by the commission that there is no longer a telecommunications carrier or alternative provider providing a comparable product or service, considering both function and price, in that exchange area.

(r) The commission shall require that for all local exchange carriers all such price deregulated basic intra-LATA toll services be geographically averaged statewide and not be priced below the price floor established in subsection (j).

(s) Cost studies to determine price floors shall be performed as required by the commission in response to complaints. In addition, notwithstanding the exemption in subsection (b), the commission may request information necessary to execute any of its obligations under the act.

(t) A local exchange carrier may petition for individual customer pricing. The commission shall respond expeditiously to the petition within a period of not more than 30 days subject to a 30 day suspension.

(u) No audit, earnings review or rate case shall be performed with reference to the initial prices filed as required herein.

(v) Telecommunications carriers shall not be subject to price regulation, except that: Access charge reductions shall be passed through to consumers by reductions in basic intrastate toll prices; and basic toll prices shall remain geographically averaged statewide. As required under K.S.A. 66-

131, and amendments thereto, and except as provided for in subsection (c) of K.S.A. 1996 Supp. 66-2004, telecommunications carriers that were not authorized to provide switched local exchange telecommunications services in this state as of July 1, 1996, including cable television operators who have not previously offered telecommunications services, must receive a certificate of convenience based upon a demonstration of technical, managerial and financial viability and the ability to meet quality of service standards established by the commission. Any telecommunications carrier or other entity seeking such certificate shall file a statement, which shall be subject to the commission's approval, specifying with particularity the areas in which it will offer service, the manner in which it will provide the service in such areas and whether it will serve both business customers and residential customers in such areas. Any structurally separate affiliate of a local exchange carrier that provides telecommunications services shall be subject to the same regulatory obligations and oversight as a telecommunications carrier, as long as the local exchange carrier's affiliate obtains access to any services or facilities from its affiliated local exchange carrier on the same terms and conditions as the local exchange carrier makes those services and facilities available to other telecommunications carriers. The commission shall oversee telecommunications carriers to prevent fraud and other practices harmful to consumers and to ensure compliance with quality of service standards adopted for all local exchange carriers and telecommunications carriers in the state.

History: L. 1996, ch. 268, § 6; July 1.

66-2006. Lifeline service program. On or before January 1, 1997, the commission shall establish the Kansas lifeline service program, hereinafter referred to as the KLSP. The purpose of the KLSP shall be to promote the provision of universal service by local exchange carriers to persons with low income. The KLSP shall be targeted to maintain affordable rates for residential local exchange service. The commission shall approve a means test to determine the eligibility of customers for such low-income assistance.

History: L. 1996, ch. 268, § 7; July 1.

66-2007. Local exchange rates; commission investigation of increases. (a) All local exchange carriers and telecommunications carriers providing long distance service in Kansas shall reduce their statewide averaged basic long dis-

tance rates to reflect the net reductions in access charges; however, such carriers shall be allowed to increase long distance rates to reflect the KUSF funding requirements set forth in K.S.A. 1996 Supp. 66-2008.

(b) The commission shall approve, upon not more than 120 days' notice, any basic local exchange price increases that in the aggregate in any one year are \$1.50 or less per access line per month, that are proposed by any rural telephone company which is subject to traditional rate of return regulation and that comply with the requirements of this section. Any such proposed price increases shall be presumed reasonable and not subject to commission investigation and review if the rural telephone company has followed the notice requirements set forth below. However, the commission shall initiate an investigation if more than 15% of the subscribers subject to the rate increase request such an investigation within 60 days of the date of distribution of the notice of the proposed change. Upon filing such an application for a rate increase, any rural telephone company seeking expedited approval of the proposed rate under this section shall send a notice to its subscribers by regular mail, which may be included with regular subscriber mailings. Such mailings shall include the name, mailing address and telephone number of the commission. The notice shall include a schedule of the proposed local exchange rates, the effective date of the rates and a description of the procedures by which the subscribers can petition the commission to determine the reasonableness of the proposed rates, including a provision specifically stating that protest by 15% or more of subscribers subject to the proposed rate increase would require the commission to initiate an investigation concerning the reasonableness of the proposed rate increase.

(c) The commission shall have the right to investigate and determine the reasonableness of an increase in local exchange rates and charges under subsection (b) by any rural telephone company within one year of the time local exchange rates or charges are increased. If the commission determines such rate or charge increases are unreasonable, the commission shall have the authority to order a rate hearing and, after such hearing, shall have the authority to rescind all or any portion of the increases found to be unreasonable.

History: L. 1996, ch. 268, § 8; July 1.

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66-2008. Kansas universal service fund; funding; authorized expenditures; supplemental funding. On or before January 1, 1997, the commission shall establish the Kansas universal service fund, hereinafter referred to as the KUSF.

(a) The initial amount of the KUSF shall be comprised of local exchange carrier revenues lost as a result of rate rebalancing pursuant to subsection (c) of K.S.A. 1996 Supp. 66-2005 and subsection (a) of K.S.A. 1996 Supp. 66-2007. Such revenues shall be recovered on a revenue neutral basis. The revenue neutral calculation shall be based on the volumes and revenues for the 12 months prior to September 30, 1996, adjusted for any rate changes.

(b) The commission shall require every telecommunications carrier, telecommunications public utility and wireless telecommunications service provider that provides intrastate telecommunications services to contribute to the KUSF on an equitable and nondiscriminatory basis. Any telecommunications carrier, telecommunications public utility or wireless telecommunications service provider which contributes to the KUSF may collect from customers an amount equal to such carrier's, utility's or provider's contribution.

(c) Pursuant to the federal act, distributions from the KUSF shall be made in a competitively neutral manner to qualified telecommunications public utilities, telecommunications carriers and wireless telecommunications providers, that are deemed eligible both under subsection (e)(1) of section 214 of the federal act and by the commission.

(d) The commission shall periodically review the KUSF to determine if the costs of qualified telecommunications public utilities, telecommunications carriers and wireless telecommunications service providers to provide local service justify modification of the KUSF. If the commission determines that any changes are needed, the commission shall modify the KUSF accordingly.

(e) Any qualified telecommunications carrier, telecommunications public utility or wireless telecommunications service provider may request supplemental funding from the KUSF based upon a percentage increase in access lines over the 12 month period prior to its request. The supplemental funding shall be incurred for the purpose of providing services to and within the service area of the qualified telecommunications carrier, telecommunications public utility or wireless tele-

communications service provider. Supplemental funding from the KUSF shall be used for infrastructure expenditures necessary to serve additional customers within the service area of such qualifying utility, provider or carrier. All affected parties shall be allowed to review and verify a request of such a qualified utility, carrier or provider for supplemental funding from the KUSF, and to intervene in any commission proceeding regarding such request. The commission shall issue an order on the request within 120 days of filing. Additional funding also may be requested for: the recovery of shortfalls due to additional rebalancing of rates to continue maintenance of parity with interstate access rates; shortfalls due to changes to access revenue requirements resulting from changes in federal rules; additional investment required to provide universal service and enhanced universal service; and for infrastructure expenditures in response to facility or service requirements established by any legislative, regulatory or judicial authority. Such requests shall be subject to simplified filing procedures and the expedited review procedures, as outlined in the stipulation attached to the order of November 19, 1990 in docket no. 127,140-U (Phase IV).

(f) Additional supplemental funding from the KUSF, other than as provided in subsection (e) of this section, may be authorized at the discretion of the commission. However, the commission may require approval of such funding to be based upon a general rate case filing. With respect to any request for additional supplemental funding from the KUSF, the commission shall act expeditiously, but shall not be subject to the 120 day deadline set forth in subsection (e).

History: L. 1996, ch. 268, § 9; July 1.

66-2009. Eligibility for KUSF funding.

(a) Local exchange carriers that provided switched local exchange services in the state prior to January 1, 1996, or their successors, shall serve as the carrier of last resort in their exchanges and shall be eligible to receive KUSF funding. However, with respect to the Hill City exchange area in which multiple carriers were certified prior to January 1, 1996, the commission's determination, subject to court appeals, shall determine which authorized carrier shall serve as carrier of last resort. The local exchange carrier serving as the carrier of last resort shall remain the carrier of last resort and shall be entitled to recover the costs of serving as carrier of last resort.